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7 Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO,
8 HEATHER FONG, in her official capacity,
JOHN KESSOR, MICHELLE ALVIS and
9 PAUL MORGADO

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 KATHLEEN ESPINOSA, individually
and as personal representative of the
13 Estate of decedent ASA SULLIVAN,
A.S., by and through his Guardian ad
14 Litem, NICOLE GUERRA,

15 Plaintiffs,

16 vs.

17 CITY AND COUNTY OF SAN
FRANCISCO, HEATHER FONG, in her
18 capacity as Chief of Police; JOHN
KESSOR, MICHELLE ALVIS and PAUL
MORGADO, et al.,

19 Defendants.

20 Case No. C06-4686 JSW

21 **STIPULATED PROTECTIVE ORDER**

22 Date Action Filed: August 2, 2006

23 Pursuant to Federal Rule of Civil Procedure 26(c) the parties have met and conferred and
24 agree that the discovery of CONFIDENTIAL INFORMATION in this matter be made pursuant to the
25 terms of this PROTECTIVE ORDER.

26 GOOD CAUSE APPEARING, the parties stipulate, though their attorneys of record, to the
27 entry of an order as follows:

1 1. CONFIDENTIAL INFORMATION, within the meaning of this
2 PROTECTIVE ORDER, shall include all documents containing peace officer personnel records,
3 official information and any other such documents that defendants in good faith have determined to
4 be confidential. Defendants shall attempt to stamp "Confidential" on all such documents prior to
5 production. In the event that any CONFIDENTIAL INFORMATION is inadvertently not stamped as
6 "Confidential" by defendants, the party who notices this oversight shall immediately make it known
7 to the other parties and the documents shall immediately be stamped as "Confidential" and treated as
8 such, as per this order.

9 2. All documents, including, but not limited to, audiotapes, videotapes,
10 photographs, transcripts, *etc.*, related to the criminal investigation incidental to the event forming the
11 basis of this lawsuit shall be also be deemed CONFIDENTIAL INFORMATION, within the meaning
12 of this stipulation.

13 3. Plaintiff may challenge defendants' designation of a particular document as
14 CONFIDENTIAL INFORMATION by filing an appropriate motion, under seal, with the Court. The
15 parties agree that the prevailing party in a motion to remove the confidential designation shall waive
16 any entitlement to monetary sanctions, including attorney's fees.

17 4. Unless disclosure is ordered by the Court, attorneys for defendants shall have
18 the sole authority to determine that documents subject to the PROTECTIVE ORDER are no longer
19 considered CONFIDENTIAL INFORMATION and will advise counsel for plaintiff in writing if this
20 determination is made.

21 5. Plaintiff's Counsel may exhibit, discuss, and/or disclose CONFIDENTIAL
22 INFORMATION only to the following categories of person and no other unless authorized by order
23 of the Court:

24 a. Plaintiff's Counsel;
25 b. Experts, investigators or consultants retained by Plaintiff's Counsel to assist in
26 the evaluation, preparation, or trial of this case; however, before any expert, investigator, or
27 consultant is permitted to review the CONFIDENTIAL INFORMATION, such individual must agree
28 to comply with the terms of this PROTECTIVE ORDER by executing the document attached as

1 Exhibit A. Plaintiff's counsel shall file and serve that document upon its execution; however,
2 Plaintiff's counsel shall not be required to file any Agreement to Comply any earlier than the date that
3 Expert Disclosures are required to be made. Experts, investigators, and consultants shall not have
4 any power to authorize further disclosure of CONFIDENTIAL INFORMATION to any other person.

5 6. Counsel for Plaintiff may not provide originals or copies of the
6 CONFIDENTIAL INFORMATION to any plaintiff absent the written agreement of counsel for the
7 City or a court order, subject to the following:

8 a. For purposes of evaluating the settlement value or potential jury
9 verdict, counsel for Plaintiff may discuss the general nature of the CONFIDENTIAL
10 INFORMATION with plaintiffs without disclosing any identifying details about a specific incident or
11 any documents. Plaintiffs' counsel may also review with a plaintiff any statement or interview given
12 by that plaintiff.

13 b. In addition, Plaintiffs' counsel may show the Homicide Investigation
14 file materials only to individual plaintiffs and discuss those materials with individual plaintiffs, but
15 may not give plaintiffs copies; however, each individual plaintiff must execute the document attached
16 as Exhibit A pursuant to the provisions of paragraph 5.b., and will be bound by this Protective Order.

17 7. Unless otherwise stipulated to by defendants, any use of CONFIDENTIAL
18 INFORMATION or comment on the substance of any CONFIDENTIAL INFORMATION in any
19 papers or pleadings filed with the Court, shall be filed under seal pursuant to the Court's rules and
20 procedures (see Northern District of California Civil Local Rule 79-5). The sealed envelopes shall
21 be endorsed with the caption of this litigation, and an indication of the nature of the contents of the
22 envelopes and a statement substantially in the following form:

23 "This envelope contains documents that are filed in this case pursuant to a
24 Protective Order and are not to be opened nor the contents thereof to be
displayed or revealed except by further order of the Court or written consent of
the City and County of San Francisco."

25 8. In the event any person desires to exhibit documents or disclose
26 CONFIDENTIAL INFORMATION covered under this stipulation during trial or pretrial
27 proceedings, such person shall meet and confer with counsel for defendants to reach an agreement, in
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1 accordance with the Court's rules and procedures, on an appropriate method for disclosure, and if
2 defendants do not agree to such disclosure, such CONFIDENTIAL INFORMATION shall not be
3 disclosed unless authorized by order of the Court. Unless otherwise agreed, transcripts and exhibits
4 that incorporate or reference CONFIDENTIAL INFORMATION covered under this stipulation shall
5 be treated as CONFIDENTIAL INFORMATION that is subject to the provisions of this
6 PROTECTIVE ORDER. The Court Reporter shall mark as "Confidential" any deposition or hearing
7 transcript that contains any CONFIDENTIAL INFORMATION or any reference to
8 CONFIDENTIAL INFORMATION.

9 9. Any inadvertent disclosure made in violation of this PROTECTIVE ORDER
10 shall be immediately corrected by the offending party and does not constitute a waiver of the terms of
11 this PROTECTIVE ORDER, except by written agreement of the parties, or further order of this
12 Court.

13 10. All documents covered by this PROTECTIVE ORDER and copies thereof
14 (including those in the possession of experts, consultants, *etc.*) will be returned to the San Francisco
15 City Attorney's Office at the termination of this litigation. On final disposition of this case, plaintiff's
16 counsel shall within 30 days after the final disposition of this case, without request or further order of
17 this Court, return all CONFIDENTIAL INFORMATION to the Deputy City Attorney of record in
18 this matter. The provisions of this PROTECTIVE ORDER shall, without further order of the Court,
19 continue to be binding after the conclusion of the action, and this Court will have jurisdiction to
20 enforce the terms of this PROTECTIVE ORDER.

21 11. Should plaintiff(s) fail to comply with this PROTECTIVE ORDER, plaintiff(s)
22 and plaintiffs' counsel shall be liable for all costs associated with enforcing this agreement, including
23 but not limited to all attorney fees in amounts to be determined by the Court. Plaintiff and plaintiff's
24 counsel may also be subject to additional sanctions or remedial measures, such as contempt,
25 evidentiary or terminating sanctions.

26 IT IS SO STIPULATED.

27 Dated: March 7, 2007

DENNIS J. HERRERA
City Attorney
JOANNE HOEPER

1 Chief Trial Attorney
2 BLAKE LOEBS
3 PETER J. KEITH
4 Deputy City Attorneys

5
6 By: Peter J. Keith
7 Peter J. Keith
8 Attorneys for Defendants

9 Dated: March 6, 2007

10 By: Ben Nisenbaum*
11 Ben Nisenbaum, Esq.
12 Attorneys for Plaintiffs

13 * Pursuant to General Order 45, the electronic signatory of this documents attests that this individual
14 concurs in his electronic signature of this document. The actual signature page is on file.

15 **ORDER**

16 BASED ON THE ABOVE ENTERED STIPULATION, IT IS SO ORDERED

17 Dated: March 9, 2007

18 
19 THE HONORABLE JEFFREY S. WHITE
20 UNITED STATES DISTRICT JUDGE

EXHIBIT A

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1 **AGREEMENT TO COMPLY WITH STIPULATED PROTECTIVE ORDER FOR**
2 **CONFIDENTIAL INFORMATION**

3 I, _____, have read and understand the Court's Protective Order for
4 CONFIDENTIAL INFORMATION. I agree to abide by all terms of the Order. In addition, I
5 specifically understand and agree to the following:

- 6 1. I will not disclose the CONFIDENTIAL INFORMATION to any other person.
7 2. I understand that I have no power to authorize any other person to review the
8 CONFIDENTIAL INFORMATION.
- 9 3. I agree not to make copies of the CONFIDENTIAL INFORMATION.
- 10 4. I agree to return the CONFIDENTIAL INFORMATION to the counsel for the party that
11 produced it, at or before the conclusion of this litigation.
- 12 5. I understand that if I violate any of the terms of the Protective Order, then Plaintiffs,
13 Plaintiffs' Counsel, and I may be subject to sanctions or possible contempt.

15 AGREED:

17 _____ DATE

18 _____ SIGNATURE

20 _____ PRINT NAME